



June 30, 2022

Assistant Secretary of Labor for Occupational Safety and Health  
Occupational Safety and Health Administration  
U.S. Department of Labor  
200 Constitution Ave. NW  
Washington, D.C. 20210

**Re: Comments on the proposed rule — Improve Tracking of Workplace Injuries and Illnesses (Docket No. OSHA-2021-0006)**

Dear Assistant Secretary Parker:

Public Citizen is a national, nonprofit public interest organization with more than 500,000 members and supporters across the country that advocates for public health and safety interests before Congress, the executive branch agencies, and the courts. We thank you for the opportunity to comment on this proposal.

We strongly urge the Occupational Safety and Health Administration (OSHA) to adopt the proposed rule, “Improve Tracking of Workplace Injuries and Illnesses,” RIN: 1218-AD40, Docket No. OSHA-2021-0006, with the exception of the proposal to no longer require all establishments with 250 or more employees to electronically submit OSHA Form 300A summaries each year.

**Proposed Changes to 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses<sup>1</sup>**

According to OSHA, “the main purpose of the proposed rule is to prevent worker injuries and illnesses through the collection and use of timely, establishment-specific injury and illness data. With the information obtained through this proposed rule, employers, employees, employee

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<sup>1</sup> *Improve Tracking of Workplace Injuries and Illnesses*, 87(61) Fed. Reg. 18528 (March 30, 2022), <https://bit.ly/3OMsxWD>. [hereinafter *Improve Tracking NPRM* (March 30, 2022)]. All proposed changes to reporting requirements apply to establishments that are already required by OSHA to record injuries and illnesses at the workplace.

representatives, the government, and researchers would be better able to identify and mitigate workplace hazards and thereby prevent worker injuries and illnesses.”<sup>2</sup>

The proposed rule would require employers in designated industries with 100 or more employees to electronically submit information from OSHA Form 300 (Log of Work-Related Injuries and Illnesses) and OSHA Form 301 (Injury and Illness Incident Report) on an annual basis.<sup>3</sup> The industries would be identified by recent high injury rates in data collected from the Bureau of Labor Statistics Survey of Occupational Injuries and Illnesses (SOII).<sup>4</sup>

The current requirement for establishments in designated industries with 20 or more employees to electronically submit OSHA Form 300A (Summary of Work-Related Injuries and Illnesses)<sup>5</sup> each year<sup>6</sup> would be maintained. However, the current requirement for all establishments with more than 250 employees, regardless of industry, to annually submit Form 300A<sup>7</sup> would be curtailed. Only those establishments on the designated industry list would be required to annually submit the 300A data to OSHA, thus eliminating the requirement for some large employers currently making those electronic submissions to continue doing so.

Under the proposed rule, OSHA also intends to update the NAICS codes used to identify industries and require employers to identify themselves on annual electronic submissions of workplace injury and illness data. OSHA plans to post the collected establishment-specific, case-specific injury and illness information, scrubbed of personally identifying information on injured employees, online in a searchable database accessible to the public.

### **Annual Electronic Reporting of Form 300 and Form 301 Injury and Illness Information**

Public Citizen supports the proposal to restore and expand employer requirements for annual, electronic submission of collected injury and illness information to OSHA. In requiring establishments in designated industries with 100 or more employees to electronically submit Forms 300 and 301, in addition to Form 300A summaries, each year, OSHA will dramatically expand its ability to monitor and eliminate workplace hazards. The Form 300A summaries that these enterprises have been submitting, while important, do not begin to provide the granular level of injury and illness data provided in Forms 300 and 301 that can lead to more significant findings about workplace hazards for all stakeholders. Form 300A summaries only provide annual numerical counts of injuries and illnesses at an establishment. OSHA Form 300 is a log

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<sup>2</sup> *Id.* at 18533.

<sup>3</sup> The OSHA Form 300 Log of Work-Related Injuries and Illnesses and Form 301 Injury and Illness Incident Report provide information about specific cases of injury or illness that occurred as a result of work at the establishment.

<sup>4</sup> Industries required to submit Forms 300 and 301 information are four-digit NAICS industries with a 3-year-average rate (2017-2019) of total recordable cases in the SOII of at least 3.5 cases per 100 full-time-equivalent employees. *Improve Tracking NPRM* (March 30, 2022) at 18543.

<sup>5</sup> The OSHA Form 300A Annual Summary provides summary information about the number of injuries and illnesses in a given year, but not about specific cases of injury or illness at that establishment.

<sup>6</sup> 29 CFR 1904.41(a)(2).

<sup>7</sup> 29 CFR 1904.41(a)(1).

that includes information about each injury and illness. OSHA Form 301 is a supplement to the Form 300 log that provides a more detailed account of each case.

In the past decade, the number of OSHA inspectors has gradually dropped dangerously low.<sup>8</sup> With the number of inspectors in 2018, it would have required 165 years for the agency to inspect every worksite.<sup>9</sup> Though the Biden administration is working to increase the number of inspectors, it would still take decades to inspect all worksites.<sup>10</sup>

Rigorous monitoring has been shown to be a primary motivator of regulatory compliance decision-making by employers.<sup>11</sup> OSHA is able to request at any time that individual establishments submit Forms 300 and 301 information,<sup>12</sup> but this usually only occurs when OSHA performs an inspection.<sup>13</sup> Given that OSHA cannot inspect the vast majority of establishments regularly, otherwise mandated agency collection of all of the record-keeping data from establishments with 100 or more employees is central to fulfilling its oversight of workplace safety.

The data collected, from records that employers are already required to keep, will enable OSHA to quickly pinpoint workplace hazards, establish its priorities, and target its enforcement efforts. It will allow OSHA to interrupt patterns of safety failures with employer education and on-site consultation. Publication of worker injury and illness data can also push employers to abate hazards and thereby prevent workplace injuries and illnesses without OSHA having to conduct onsite inspections.<sup>14</sup> Only through collection and public disclosure of workplace injuries and illnesses can OSHA achieve these goals without a massively increased budget for inspections.

The data collected from Forms 300 and 301 will also allow better assessment of the scope of dangers workers face, including any emerging safety or health concerns, and provide information on the effectiveness of procedures and programming to protect workers. For example, the full scope of heat-related injuries, illnesses and fatalities at the workplace is unknown.<sup>15</sup> While data collected by employers may fail to include information on all heat stress injuries and illnesses,<sup>16</sup> broader collection of the data recorded by employers will assist in better estimates of the scope of the problem. As noted in the proposed rule, data collected from employers as the new National Emphasis Program to address environmental heat is

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<sup>8</sup> NELP, WORKER SAFETY IN CRISIS: THE COST OF A WEAKENED OSHA, (April 2020), <https://bit.ly/39ZpA6v>.

<sup>9</sup> *Id.*

<sup>10</sup> *Improve Tracking NPRM* (March 30, 2022) at 18533.

<sup>11</sup> Wayne B. Gray and Jay P. Shimshack, *The Effectiveness of Environmental Monitoring and Enforcement: A Review of the Empirical Evidence*, 5(1) REVIEW OF ENVIRONMENTAL ECONOMICS AND POLICY 3–24 (2011), <https://bit.ly/3ya8r1l>.

<sup>12</sup> 29 CFR 1904.40.

<sup>13</sup> 81(92) Fed. Reg. 29624 at 29627.

<sup>14</sup> See, e.g., Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Penguin Books, 2009).

<sup>15</sup> See, e.g., Juley Fulcher, BOILING POINT: OSHA MUST ACT IMMEDIATELY TO PROTECT WORKERS FROM DEADLY TEMPERATURES, PUBLIC CITIZEN (June 28, 2022), <https://www.citizen.org/article/boiling-point/>.

<sup>16</sup> *Id.*

implemented,<sup>17</sup> as well as before and after a new heat standard is promulgated,<sup>18</sup> will provide critical information on the application of these new efforts to protect workers from environmental heat hazards.

### **Creating a Publicly Accessible Searchable Database of Injuries and Illnesses**

Publicly posting the collected injury and illness data in a searchable online database that includes establishment-specific, case-specific injury and illness information will benefit workers. While workers, or their designee, currently have a right to receive this information from their employer upon request,<sup>19</sup> it may be difficult to exercise that right. Employees may fear retaliation from their employer for making such a request — retaliation that is prohibited by regulation yet continues to occur.<sup>20</sup> Also, potential employees will benefit from the availability of injury and illness data from establishments as they make informed decisions about employment. Workers can compare injury rates between potential employers and choose to work for the safer employer. This puts power in the hands of labor, incentivizing employers to improve safety given the competition for workers.

The accessibility of establishment-specific data to potential lenders, investors, consumers, media, and the general public would shine a spotlight on hazardous workplaces. The accessibility of the data would also allow workers, media and the public to identify potential underreporting of injuries and illnesses by employers.<sup>21</sup> Bringing performance information out into the open is an effective form of behavioral economics impacting employer decision-making.<sup>22</sup> It serves as a strong incentive for employers to improve their safety records and support their reputations.<sup>23</sup> It would encourage employers to implement systems, protocols, education and workplace alterations, resulting in less worker injuries and illnesses. Employers can also use establishment-specific, case-specific injury and illness information to compare their safety record to similar establishments and set benchmarks for improvement of their own safety and health performance.<sup>24</sup>

Negative publicity has been shown to improve not just the behavior of the highlighted employer, but also other employers. This general deterrence effect has been demonstrated by improved compliance with safety standards by employers after OSHA issued press releases on

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<sup>17</sup> *Improve Tracking NPRM* (March 30, 2022) at 18538.

<sup>18</sup> OSHA is currently developing a standard to protect workers from heat stress. *See, Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings*, 86(205) Fed. Reg. 59309 (Oct. 27, 2021), <https://bit.ly/3dosuj7>.

<sup>19</sup> 29 CFR 1904.35(b)(2)(iii).

<sup>20</sup> *See, e.g., Jonathan H.Schaefer, OSHA retaliation complaints rising – Have you checked your anti-retaliation program lately?*, INDUSTRIAL SAFETY AND HYGIENE NEWS (Oct 14, 2021), <https://bit.ly/3bBYxhU>.

<sup>21</sup> *See, e.g.,* 81(92) Fed. Reg. 29624 at 29630.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

OSHA violations uncovered during inspections.<sup>25</sup> The impact was so powerful that press releases led to 73 percent fewer safety violations identified during programmed inspections at neighboring enterprises and a drop in injury reports from the same enterprises.<sup>26</sup>

Organizations and researchers plan to use the data made publicly available through the rule to assist the public or their memberships in a variety of ways including to conduct research on issues of workplace health and safety; assist in the development of training and education programs; and effectively track, investigate, and prevent work-related injury and disease in the United States.<sup>27</sup> Mandated and regular data reported by establishments also would form the basis for strategic in-person inspections that either result in the verification of the reported data or sanctions or other remedies regarding the discovered fraud. The critical details of workplace injuries and illnesses included in Forms 300 and 301 are unavailable through other sources, such as workers' compensation records or required state reporting of injuries and illnesses.

Publication of the establishment-specific, case-specific injury and illness information will further permit public health organizations, like Public Citizen, and occupational hygiene experts to analyze the causes of work-related injury and disease in the U.S. and to develop solutions to reduce or eliminate such injury and disease. The COVID-19 crisis is a clear example of information about workplace spread of a disease that was critical to understanding the novel SARS-CoV-2 virus and developing solutions to protect of both workers and their communities. With these more granular disclosures, researchers will be able to study specific types of injuries or illnesses in detail. OSHA noted that the data will be "useful in identifying hazards that result in a small number of injuries or illnesses in each establishment but a large number overall, due to a wide distribution of those hazards in a particular area, industry, or establishment type."<sup>28</sup> Thus, making the establishment-specific data publicly accessible would greatly assist OSHA in achieving its mission of protecting workers.

As a necessary part of creating an establishment-specific, case-specific injury and illness database, Public Citizen supports the proposal to add a requirement that all employers report their Employer Identification Number along with their injury and illness data. This will not only lead to greater efficiencies for government agencies and employers, it will also allow

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<sup>25</sup> Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, 110(6) AMERICAN ECONOMIC REVIEW 1866-1904 (2020), <https://bit.ly/3nrmPxQ>.

<sup>26</sup> *Id.* at 1868.

<sup>27</sup> Public Citizen Health Research Group, et. al., v. Alexander Acosta, Secretary, U.S. Department of Labor, et al., No. 18-cv- 1729 (D.C. Cir. July 25, 2018), <https://bit.ly/2KqjokQ>; Declaration of David Michaels, PHD, MPM, Public Citizen Foundation v. U.S. Department of Labor, et.al., No. 18-cv-117-EGS (D.C. Cir. June 29, 2018); Declaration of Michael A. Carome, MD, Public Citizen Health Research Group, et. al., v. Alexander Acosta, Secretary, U.S. Department of Labor, et al., No. 18-cv-1729-TJK (D.C. Cir. June 29, 2018); Declaration of Michael A. Carome, MD, Public Citizen Health Research Group, et. al., v. Alexander Acosta, Secretary, U.S. Department of Labor, et al., No. 18-cv-1729-TJK (D.C. Cir. September 7, 2018); Declaration of Georges C. Benjamin, Public Citizen Health Research Group, et. al., v. Alexander Acosta, Secretary, U.S. Department of Labor, et al., No. 18-cv-1729-TJK (D.C. Cir. September 7, 2018); Declaration of Robert Harrison, MD, MPH, Public Citizen Health Research Group, et. al., v. Alexander Acosta, Secretary, U.S. Department of Labor, et al., No. 18-cv-1729-TJK (D.C. Cir. September 7, 2018).

<sup>28</sup> *Improve Tracking NPRM* (March 30, 2022) at 18534.

comparison of databases and provide a greater breadth of information to assist researchers. The information could be combined with information on fatalities, wages, migration, employment discrimination, climate change, poverty, healthcare access, or any of a large number of other sources of data to identify factors impacting worker health and safety.

### **Opposition to Eliminating Requirement for Some Employers to Submit Form 300A Summary Data**

Public Citizen opposes the proposal to no longer require annual electronic submission of worker injury summaries (Form 300A) by employers of 250 or more employees in all industries.<sup>29</sup> OSHA has identified a small number of industries as “low-hazard” and “not a priority for OSHA inspection targeting or compliance assistance activities.”<sup>30</sup> Though OSHA estimates less than 3,000 establishments currently electronically submitting Form 300A summaries each year would no longer be required to submit the Form 300A summaries,<sup>31</sup> the value of continuing to collect the information from these employers outweighs any supposed burden. Indeed, there is no significant burden because such employers are already required to keep Form 300A data and they already have systems in place for submitting the data electronically on an annual basis.

While these industries may have had a lower rate of injuries in recent years — as identified by an arbitrary cut off of 3.5 injuries per 100 employees<sup>32</sup> — some worker injuries and illnesses still occur. OSHA’s goal to use collected data to prevent worker injuries and illnesses should apply to all workers. As noted in the proposed rule, the purpose of the Occupational Safety and Health Act is “to assure so far as possible every working [person] in the Nation safe and healthful working conditions.”<sup>33</sup> This purpose is furthered “by providing for appropriate reporting procedures. . . [that] will help achieve the objectives of this Act and accurately describe the nature of the occupational safety and health problem.”<sup>34</sup> In keeping with this goal, continuing to collect summary 300A data from all establishments with 250 or more employees will assist in assuring every worker labors in safe conditions.

As has already been discussed, data collected from electronic submission of injury and illness information can help identify broad patterns from small injury and illness numbers per establishment. Having this additional data from Form 300A summaries would assist with research into specific types of injuries and illnesses. Furthermore, past injury rates used to designate industries required to report the data may not reflect more recent safety conditions within industries. In fact, the identification of industries required to report 300A summaries based on injury rates within that industry serve as an incentive for employers to underreport

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<sup>29</sup> Enterprises in these industries would also be exempt from the new requirement of submission of Forms 300 and 301 for employers of 100 or more employees.

<sup>30</sup> *Improve Tracking NPRM* (March 30, 2022) at 18536.

<sup>31</sup> *Id.*

<sup>32</sup> *Improve Tracking NPRM* (March 30, 2022) at 18543.

<sup>33</sup> Congressional Statement of Findings and Declaration of Purpose and Policy, 29 U.S.C. 651(b).

<sup>34</sup> Congressional Statement of Findings and Declaration of Purpose and Policy, 29 U.S.C. 651(b)(12).

worker injuries and illnesses, joining other pernicious incentives that already exist.<sup>35</sup> Moreover, the COVID-19 pandemic is a distinctive reminder that even seemingly “low-hazard” workplaces can be the epicenter of deadly outbreaks. If structured and deployed properly the 300A summaries can become a source of such impactful, albeit lagged, surveillance data.

### **Conclusion**

Public Citizen strongly supports the proposal to amend OSHA’s requirements for the electronic reporting of occupational injuries and illnesses to the agency, including the requirement of establishments with 100 or more employees in designated industries to annually submit Forms 300, 301 and 300A and the online publication of an establishment-specific, case-specific injury and illness database. However, we oppose the elimination of the requirement to submit Form 300A summaries for some establishments with 250 or more employees. The utility of injury and illness data for workplace health and safety is invaluable to protecting workers and there should be no reduction in data currently being submitted electronically to OSHA.

Thank you for the opportunity to comment on this important worker health and safety issue. For questions, please contact Juley Fulcher, worker health and safety advocate in Public Citizen’s Congress Watch division, at [jfulcher@citizen.org](mailto:jfulcher@citizen.org).

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<sup>35</sup> See, e.g., U.S. GENERAL ACCOUNTING OFFICE. WORKPLACE SAFETY AND HEALTH: ENHANCING OSHA’S RECORDS AUDIT PROCESS COULD IMPROVE THE ACCURACY OF WORKER INJURY AND ILLNESS DATA. GAO-10-10 (Oct. 2009). <http://www.gao.gov/new.items/d1010.pdf>.